

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

RAY STEININGER and
HERMINIA STEININGER
Respondents

Case Nos.: I-00-70114
I-00-70279

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Code §§ 6-2701, *et seq.*) and Titles 21 and 23 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. 00-70114), served by regular mail on April 26, 2001, the Government charged Respondents Ray Steininger and Herminia Steininger with a violation of 21 DCMR 700.3¹ and 23 DCMR 3012.1.² The Notice of Infraction alleges that these violations occurred on April 24,

¹ 21 DCMR 700.3 provides: “All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.”

² 23 DCMR 3012.1 provides: “All persons engaged in the operation of any restaurant, delicatessen, or catering business shall be required to take all necessary precautions to keep the premises free from rats and vermin.”

2001 behind Respondents' apartment building located at 3115 Mt. Pleasant Street, NW, and seeks a fine of \$1,000.00 for each violation, for a total of \$2,000.00.

Because Respondents failed to answer the Notice of Infraction (No. 00-70114) within the allotted twenty (20) days (fifteen days plus five days for mailing pursuant to D.C. Code §§ 6-2712(e), 6-2715), this administrative court issued an order on May 25, 2001 finding Respondents in default, assessing a penalty of \$2,000.00 pursuant to D.C. Code § 6-2704(a)(2)(A) and directing the Government to issue a second Notice of Infraction in accordance with D.C. Code § 6-2712(f). The Government served the second Notice of Infraction (No. 00-70114) by regular mail upon Respondents on June 1, 2001.

On June 4, 2001, this administrative court received Respondents' untimely plea of Deny to the first Notice of Infraction and a request for a hearing. Accompanying Respondents' plea was a captioned pleading form submitted by Respondent Hermina Steininger which noted that she did not receive the first Notice of Infraction (No. 00-70114) until June 1, 2001. Accordingly, on June 11, 2001, this administrative court issued an order setting a hearing date for July 18, 2001.

A hearing was held on July 18, 2001 as scheduled. Appearing on behalf of the Government was Gerard Brown, the charging inspector in the case. Appearing on behalf of Respondents was Hermina Steininger who proceeded *pro se*. At the start of the hearing, the

alleged violation of 23 DCMR 3012.1 was dismissed with the Government's consent.³ Respondents then amended their plea of Deny to the remaining charge of violating 21 DCMR 700.3 to Admit with Explanation.

II. Summary of Evidence

Respondents explained that people from the neighboring buildings routinely dump their trash in and around Respondents' dumpster without their permission.⁴ Respondents state that these neighbors often breach the gate around the dumpster to gain access. Respondents stated that they have twice-weekly trash pick-ups of their dumpster which, they believe, would be adequate for their building but for the unauthorized dumping. As to their untimely response, Respondents stated that they did not receive the first Notice of Infraction until June 1, 2001 and, once they received it, they promptly responded to it.

The Government presented no contrary evidence as to when Respondent received the first Notice of Infraction. The Government neither objects to a reduction of the fine for Respondents' admitted violation of 21 DCMR 700.3, nor to a suspension of the penalties for Respondents' failure to timely respond to the first Notice of Infraction.

³ The Notices of Infraction in this case plainly list the business license/permit type held by Respondents at 3115 Mt. Pleasant St., NW as "APARTMENT". Because 23 DCMR 3012.1 only addresses the activities of a "restaurant, delicatessen, or catering business", it has no application to Respondents' activities at the 3115 Mt. Pleasant St. NW location.

⁴ At the hearing, Respondents were prepared to offer the testimony of two witnesses, Pedro Coreas and Sonia Privado, who would testify as to the unauthorized dumping. Because the Government stipulated to this fact, Respondents' witnesses were not called to testify.

III. Findings of Fact

1. By their plea of Admit with Explanation, Respondents admit violating 21 DCMR 700.3 on April 24, 2001 at 3115 Mt. Pleasant St., NW.
2. On April 24, 2001, Respondents failed to store and containerize for collection all solid wastes in a manner that would not “provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.” 21 DCMR 700.3.
3. Neighbors of Respondents’ apartment building at 3115 Mt. Pleasant St., NW routinely dump trash in and around Respondents’ dumpster without authorization.
4. Respondents have twice-weekly trash pick-up at their apartment building.
5. The gate surrounding Respondents’ dumpster is often breached by unauthorized dumpers.
6. The Government noted during the hearing an improvement in the maintenance of the area around Respondents’ dumpster after the issuance of the Notices of Infraction.
7. Respondents have requested a reduction or suspension of any fines imposed for their admitted violation of 21 DCMR 700.3. The Government does not object to a reduction, although objects to a suspension, of such fines.
8. Respondents indicated at the hearing that they had previously received a \$75.00 fine relating to litter control for a property they owned on Georgia Avenue, NW. Respondents stated that, while they did not believe they were responsible for the infraction at issue, they paid the fine for the sake of expediency.

9. The Government certified serving the first Notice of Infraction (No. 00-70114) by regular mail on April 26, 2001. The service address used by the Government was 1805 Irving Street, NW #202, which Respondents have stated is their correct address. However, because regular mail was used for service, there is nothing in the record confirming when the Notice of Infraction was actually delivered to Respondents.
10. Respondent received the first Notice of Infraction on June 1, 2001, and their plea was received by this administrative court on June 4, 2001.
11. Respondents have requested a reduction or suspension of any assessed penalties for their untimely response to the first Notice of Infraction. The Government does not object to a suspension of such penalties.

IV. Conclusions of Law

1. Respondents violated 21 DCMR 700.3 on April 24, 2001. A fine of \$1,000.00 is authorized for that violation. 16 DCMR 3216.1(a).
2. Respondents have requested a reduction or suspension of any imposed fine. The Government does not object to a reduction, but opposes a suspension, of the fine. Although Respondents have entered a plea of Admit with Explanation, they have largely deflected all responsibility for the violation to trespassing neighbors. *Cf.* U.S.S.G. § 3E1.1 (acceptance of responsibility as mitigating sentencing factor). In light of Respondents' uncontroverted efforts to better maintain the area around their dumpster, however, this administrative court concludes that a modest

reduction of the fine is appropriate in this case. Accordingly, the fine is reduced to \$825.00. *See* D.C. Code §§ 6-2712(a)(2), 6-2703(b)(6).

3. Pursuant to D.C. Code § 6-2712(f), if a respondent has been served a notice of infraction and fails, without good cause, to answer it within the allotted time period, the respondent is liable for a penalty in the amount of the fine. *See* D.C. Code §§ 6-2712(f), 6-2704(a)(2)(A). In this case, Respondents have demonstrated good cause for failing to timely answer the Notice of Infraction: Respondents have presented uncontroverted evidence that, although the Government mailed the first Notice of Infraction on April 26, 2001, they did not receive it until June 1, 2001. In light of this fact, as well as the Government's stated lack of objection to a suspension of the penalties, the penalties assessed for Respondents' failure to timely answer the first Notice of Infraction as reflected in this administrative court's order of May 25, 2001 shall be suspended.

V. Order

It is, therefore, upon the entire record in this matter, this ____ day of _____, 2001:

ORDERED, that the charge of Respondents Ray Steininger and Herminia Steininger violating 23 DCMR 3012.1 as listed in Notices of Infraction 00-70114 and 00-70379 is hereby **DISMISSED WITH PREJUDICE**; and it is further

ORDERED, that Respondents shall jointly pay a total of **EIGHT HUNDRED AND TWENTY-FIVE DOLLARS (\$825.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715); and it is further

ORDERED, that, if Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order. D.C. Code § 6-2713(i)(1), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001; and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Code § 6-2713(f), the placement of a lien on real and personal property owned by Respondents pursuant to D.C. Code § 6-2713(i), and the sealing of Respondents' business premises or work sites pursuant to D.C. Code § 6-2703(b)(6).

/s/ **7/27/01**

Mark D. Poindexter
Administrative Judge